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March 31, 2003

Rebecca Kane
Environmental Protection Agency
Office of Enforcement and Compliance Assurance
MC 2222A
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Enforcement and Compliance History Online Website "ECHO"
67 *FR* 70079-70080; November 20, 2002

Dear Ms. Kane:

The American Petroleum Institute (API) submits the attached comments to the U.S. Environmental Protection Agency (EPA) on its Enforcement and Compliance History Online Website "ECHO" [67 *Federal Register* 70079-70080; November 20, 2002]. API represents more than 400 member companies involved in all aspects of the oil and gas industry. The ECHO database contains information about thousands of facilities owned and operated by our member companies. Our members are significantly affected by EPA's dissemination of information about them on the ECHO website, and we offer these comments to help EPA improve the quality of the important enforcement and compliance information that is presented via ECHO.

API is a member of the Coalition for Effective Environmental Information (CEEI), which will also submit comments to EPA under separate cover. API agrees with the comments of CEEI and urges EPA to give full consideration not only to the comments provided herein, but to the comments of CEEI as well.

API's main comments pertain to improving the error correction process, raising the quality of ECHO information about purported violations, and enhancing the process for posting data. We also urge EPA to take full responsibility for data quality and improve pre-dissemination review, more clearly present caveats, remove demographic data from ECHO, and consider the costs and benefits of the project. Many of our specific comments and suggestions originate from review by our members of individual ECHO reports on their facilities. After reviewing facility reports, members provided API with numerous examples of errors and problems in the database, many of which resulted in misrepresenting the compliance status of facilities.

API appreciates EPA's launch of ECHO as a pilot and the opportunity to comment on the database. Ensuring the quality of information in ECHO, and appropriately presenting the information, is essential for the success of the ECHO project, as well as crucial for the facilities that are the subject of information in the database. API would be pleased to meet with EPA to discuss our comments and to find efficient solutions to the issues we have raised. In addition, feel free to contact me at 202-682-8598 or retzsch@api.org if you have any questions about our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter C. Retzsch", with a long horizontal flourish extending to the right.

Walter C. Retzsch

cc: Lorraine Twerdok, API
API RTK/EI Task Force
John D. Graham, Office of Information and Regulatory Affairs, OMB

**COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE
ON
Enforcement and Compliance History Online Website
“ECHO”
[FRL-7410-5]**

67 FR 70079-70080; November 20, 2002

March 28, 2003

**American Petroleum Institute
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COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE
Enforcement and Compliance History Online Website
(“ECHO”)
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COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE

Enforcement and Compliance History Online Website ("ECHO")

I. Executive Summary

The American Petroleum Institute (API) appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency (EPA) on its pilot Enforcement and Compliance History Online Web Site ("ECHO"). API represents more than 400 member companies involved in all aspects of the oil and gas industry. *Our members are likely to be significantly affected by EPA's dissemination of information on the ECHO website.* This website, to which EPA is providing unrestricted access, contains information of varying quality about thousands of facilities owned and operated by our member companies.

There are many potential consequences of posting incorrect or misleading data on ECHO, and of presenting data in a misleading manner. Consequences include fostering the impression that enforcement by the States or EPA is weak or inadequate, when this may not be the case. In addition, inaccurate data and misleading presentation have the potential to create an impression that negates industry's progress in implementing environmental controls, or that falsely implies that the regulated community is not concerned with complying with laws protecting the health of employees and surrounding communities and safeguarding the environment. Furthermore, incorrect or misrepresented ECHO information could mislead the public and misdirect public and private resources (e.g., when government agencies or industry personnel need to undertake efforts to respond to misguided concerns).

API's main comments on ECHO are summarized as follows.

- Based on review of the ECHO database by some of our members, it appears that the database has an unacceptably high level of error. We present some

examples of errors in section II below. It is very important that EPA address this level of error by improving the error correction process, correcting errors as soon as possible, and fixing the system problems that created errors in the first place. EPA should not simply caveat erroneous or misleading data; rather, such data should be corrected or removed. API offers suggestions throughout these comments that we hope will assist EPA in improving the quality of the database.

- API urges EPA to improve its error correction process. Specifically, EPA should establish timeframes for correcting errors, describe its error correction process more clearly, make the process user-friendlier, flag information for which correction requests are pending, and not accept error reports from third parties.
- ECHO is an EPA information product, and EPA should take full responsibility for the quality of the information that it is disseminating. EPA must not shift the blame to States if data are inaccurate, and the Agency must conduct thorough pre-dissemination review of all ECHO data, as required under EPA Information Quality Guidelines.
- EPA needs to improve the quality of ECHO information about purported violations. The database fails to distinguish, as it should, between alleged and actual (admitted or proven) violations. The database also should indicate when violations are isolated instances of non-compliance with one of many program requirements or permit conditions, as opposed to broader violations of the entire program. In addition, EPA should not misrepresent corrected situations as continuing noncompliance, and should add a mechanism to ECHO to indicate when a facility has remedied non-compliance. EPA should provide additional context on the number of obligations or compliance opportunities that exist within the major programs (e.g., the number of non-compliance incidents relative to the number of compliance opportunities or requirements). EPA also should not attribute company-wide fines or settlements to individual facilities.
- API offers suggestions that EPA retain and augment database caveats, clearly

date facility reports each time they are updated, directly inform facilities when it posts new information about them, and provide its schedule for posting and editing data.

- EPA should remove demographic data from the ECHO database. The demographic data have no relationship to enforcement and compliance information, and inclusion of the demographic data misrepresents ECHO as a database that can be used to assess risk.
- EPA should further assess the costs and benefits of the ECHO project.

These points are discussed in detail in the remainder of this document.

II. High Level of Error in ECHO

Since EPA posted the ECHO database, API member companies have spent significant time reviewing the website and submitting correction requests as necessary. API asked its members for examples of the errors found in ECHO and received many. The table below lists examples of the errors our members have found. Note that there are various types of errors ranging from incorrect facility identification information to erroneous postings of non-compliance.¹ The examples that involve misleading information about compliance status are listed first in the table below.

Examples of ECHO Errors From API Member Companies

1. A refinery has not been in operation for many years (closed in 1993), had air permits that expired in 1994, and was torn down in 2000. However, ECHO identified the non-existent refinery as out of compliance with the Clean Air Act for all of the last eight quarters.
2. A Facility Report indicated unresolved violations from the third and fourth quarters, but the facility did not have any unresolved violations. After the facility submitted an error correction request, EPA concurred that its data were incorrect.
3. The ECHO "Two Year Compliance Status by Quarter" for a facility

¹ Note that even facility identification errors pose serious concerns, because they potentially misidentify parties responsible for violations.

indicated that there were four open violations dating back to 1991, but the facility did not have open violations. After the facility submitted an error correction request, EPA concurred its data were incorrect. As of this writing, the ECHO database still has not been changed.
4. An Ohio EPA inspection noted Resource Conservation and Recovery Act (RCRA) violations that were all corrected in same quarter. The month after the inspection, the facility received a letter from Ohio EPA stating that the facility had adequately demonstrated abatement of all violations and concerns. However, the ECHO database showed five quarters of non-compliance.
5. A notice of violation was listed for a facility even though the notice had been withdrawn.
6. A company found an enforcement action listed in ECHO, but the action had not occurred.
7. The Compliance Summary Data for wastewater discharge incorrectly identified two quarters of non-compliance for a facility. Echo's "Two Year Compliance Status by Quarter" listed several exceedances. However, none occurred, and none were reported on the discharge monitoring reports (DMRs).
8. ECHO listed a single alleged violation for eight quarters, even though the issue was corrected in the same quarter that it was found.
9. A facility was listed as in violation of all areas of RCRA since 1990, when this was not the case.
10. Under the "EPA Formal Enforcement Cases (02 year history)" section, a case that had been settled more than two years previously (9/29/2000) was still listed as current.
11. Two Notices of Violation that were issued and rescinded in the same month in 2001 were still listed as violations under "Two Year Compliance Status by Quarter" and "Formal Enforcement Actions."
12. There appears to be some lack of consistency between ECHO "Compliance Summary Data" and "Facility Level Status" information. For example, one facility report showed three NPDES effluent violations, but also indicated the facility is in compliance for all eight quarters. The "Compliance Summary Data" section showed the facility as noncompliant for three of eight quarters.
13. For one company, five out of seven refineries were shown as out of compliance with RCRA for eight of eight quarters. However, some of these refineries have not even had a recent RCRA inspection, much less a Notice of Violation.
14. One company was assessed a total consent decree penalty of \$9.9 million, to settle allegations of violations at nine refineries. The total \$9.9 million fine was listed in seven of the nine refineries' facility reports, giving the incorrect impression that each refinery was subject to a fine this high and that the total company fine was \$69.3 million (seven times as large as it actually was).
15. A facility report shows an NPDES violation due to high pH. However, in that State, if the high pH is due to algae in the sample (which in this case it was), then it is not considered non-compliance.

16. A facility report showed a system upset as a violation, even though the upset was allowable under the NPDES program.
17. One entity reported numerous errors in NPDES permit information, including incorrect indication of nonreceipt of DMRs, concentration maximums shown without minimums and averages, absence of information that permits are extended (leading user to believe permit is expired), monitoring section showing analysis not conducted when it was conducted and reported on the DMR, missing monitoring periods, incorrect addresses and longitude/latitude, incorrect names and phone numbers, incorrect information about Indian Lands permits, and other errors.
18. ECHO listed incorrect source identification and SIC code information for a facility.
19. Although a facility has a Title V major source air permit, minor source entries were included in the database.
20. A facility was listed as a RCRA treatment, storage, and disposal (TSD) facility, even though its current status is large-quantity generator (LQG). The TSD permit for on-site incineration expired in 2000 and the facility has since completed closure.
21. A facility found incorrect stormwater permit information (including renewal status and source identification information).
22. Portions of the database are difficult to decipher because the inspections, settlements and fines do not match up with the dates. Some settlements shown in 2001 actually occurred in 2000.
23. Two locations that did not belong to a company were listed under the facility mailing address.
24. Under RCRA INFO, of two people listed as the "regulatory contact," one was "Env Manager" with no name; the other had left the company 15 years ago.
25. Under AIRS/AFS, an employee was incorrectly shown as the "Compliance Person." She tried to change the name and received an email that she could not change it since the data came from a TRI report, and as such she was trying to modify a submitted report. (However, it is not clear how the TRI report relates to AIRS/AFS).
26. One company found that many of its facilities were shown to have multiple different names, addresses, and latitude and longitude throughout ECHO.
27. One company found that many of its facilities were listed with incorrect addresses and SIC codes.
28. ECHO error information collected from one API member's 12 refineries identified at least 1300 errors (each field in a line counted as 1 error), with many errors carried over from one section to another (due to permit/facility identifier errors).

That API member companies found so many errors is a disturbing indicator of the degree of errors in the ECHO database. Our members' reports of errors are consistent with the many reports of errors that already appear in EPA's online

“digest” of comments from ECHO users. API is especially concerned that there are so many instances in which ECHO inaccurately portrays a facility as noncompliant. We request that EPA reveal the number of error correction requests and comments regarding errors that it receives during the ECHO pilot period, post the number of correction requests received on the ECHO database, post the number of correction requests granted, and take into serious consideration the database level of error when deciding how to move forward with the program.

It is unacceptable for the Agency to disseminate information that mischaracterizes companies as environmental violators, particularly in such a high-profile format. Given the potential adverse effects of such misleading information, the Agency should extend the “pilot” designation on the ECHO database, until it has addressed all public comments and corrected the numerous errors and the system flaws behind them.

Meanwhile, if EPA does keep the ECHO database posted publicly on its website, the Agency needs to flag or highlight data that have been questioned, correct errors in the database promptly, find and fix the system flaws that caused them in the first place, and improve the error correction process. These actions are necessary to bring the database to even a rudimentary level of accuracy and fairness. The remainder of our comments contain suggestions for addressing some of the problems in ECHO, and we urge EPA to implement these ideas and others it may receive to improve the quality of its ECHO information product. API would be pleased to meet with EPA to discuss API comments and to mutually find solutions to the issues we raised.

III. Error Correction Procedures

A. Timeframes for correcting errors

EPA’s error correction procedures should include specific timeframes for correcting errors. The current process creates a situation in which EPA can post misleading or inaccurate data about a facility, and then take an

indefinite amount of time to correct that information, even when a facility has taken the time and effort to submit an error correction request promptly. In the current system, EPA has placed the burden on facilities to find errors and report them to EPA, but EPA has not committed to a timeframe in which it will address and correct errors. Despite EPA's announced intention to process error corrections promptly, the absence of fixed timeframes or deadlines for doing so creates an unacceptable situation that compounds the posting of erroneous data in the first place. Therefore, EPA's error correction process should contain timeframes or deadlines for key activities in the error correction process, such as assigning a contact, responding to the facility after initial contact has occurred, and (most importantly) correcting information in the ECHO database. If any of these timeframes are exceeded, the information in question should be removed from ECHO until it is either verified or corrected.

B. Error correction process

Based on their experience with error correction responses to date, our members report that it is difficult to know when an error has actually been corrected in ECHO. The requester needs to keep checking to see whether or not the correction has been made. This places too much burden on the correction submitter, when EPA should be communicating more clearly to submitters regarding the action it is taking to resolve errors.

In addition, ECHO currently provides no instructions on what a correction submitter should do if it does not receive the communications that EPA says will follow. For example, one of our member companies submitted an error correction request and received an automated confirmation, but then did not receive the expected follow-up communication indicating who would be assigned to investigate the error. Another member received communication from the assigned investigator with assurances that

corrections would be made, and then a month passed with no further communication or correction.

Our members' experience is that the error correction process is a moving target, often not following the steps EPA previously has outlined. In one instance, a representative from one of our member companies was instructed that he needed to call EPA's contractor in California to have incorrect SIC codes changed. One facility received an email from EPA that stated that incorrect information could not be changed if it originated from a permit application and that "[c]hanges to previously submitted information require paperwork sent to the appropriate office."

To address these problems, EPA should provide a detailed description of the procedures that it will follow for each type of error correction request. These procedures should be sufficiently detailed so that an entity submitting an error correction request can track the request through the entire process, from submission to the point where EPA sends a notice to the requester that the data has been posted correctly on ECHO.

In clearly describing error correction procedures, we suggest that EPA provide a flow chart depicting the responsible government official, the timeframe for key steps, any procedural requirements for each stage in the error correction process, and whom to contact at each stage if the assigned data steward is not responsive to a facility's correction request. This information should be provided in the first confirmation email received by the requester from EPA.

Finally, some of our members have found the online correction process difficult and confounding in practice. One example is repeated receipt of error messages such as "The error submission form does not automatically identify the web page you had a problem on. In order to properly identify

the error, please tell us the name, address, program system and program system ID number for the facility.”

Members report that the online correction system is not user friendly. For example, when multiple corrections are necessary, the system returns the user to the beginning of the process after every correction entry. A user then has to re-enter log in and identification information, and then return to the document to make the next correction. EPA should revise the software to allow multiple corrections on a single facility report.²

C. Information for which correction requests are pending

Given the time EPA and the States take to address error correction requests, it is important that the ECHO database allow for flagging of information for which correction requests are pending. EPA indicated during the initial ECHO demonstration that the Agency would only flag errors that it has already agreed need to be corrected. It is equally important to flag pending requests to avoid the unfair consequences of inaccurate information. During the time in which incorrect compliance information is posted, there is the significant potential for the adverse impacts such as business constraints (e.g., permit delays or denials) and public criticism.

There are a variety of options available to EPA to flag pending correction requests. One would be to use a unique code to indicate an error correction request is pending. (For example, “VIOL” could be replaced with “VIOL-EC.”) Another would be to color code any item for which the Agency has received an error correction request, and apply a different color when the item has been corrected. This system would accomplish two things: (1) it would clearly show what data points are in question; and

² This is particularly important for correcting NPDES information, an area in which members are reporting numerous errors for single facilities.

(2) it would later indicate that a particular data point has been corrected.

D. Parties submitting correction requests

The design of ECHO allows anyone to submit an error correction request using the “report error” button. However, only facilities (or their associated companies) and EPA or the states have knowledge relevant to the enforcement and compliance information in ECHO. It is not clear whether EPA meant to facilitate error reports from others (i.e., third parties, such as members of the public or public interest groups). In any case, EPA should accept error correction requests only from facilities or companies that are the subject of the data in question.

Error requests from third parties cannot be expected to be based on relevant knowledge or information, because these third parties have no direct role in the enforcement and compliance process—the parties in the enforcement and compliance transaction are facilities/companies and EPA or the State. Furthermore, accepting error reports from third parties has the potential to overload the error correction process and slow EPA’s response to legitimate error correction requests from facilities, which are the subject of the information.

Therefore, EPA should clarify that it will accept error correction requests only from the facility (or associated company) that is the subject of the data. At a minimum, EPA should notify facilities when any party (other than the facility or company itself) requests a change to the ECHO data about that facility.

IV. EPA responsibility for data quality

A. Pre-dissemination review

As mandated by the Data Quality Act of 2000, OMB has directed agencies to develop a process for reviewing and assuring the quality (including the objectivity, utility, and integrity) of information before it is disseminated.³ It is not clear what pre-dissemination review EPA is conducting on the information in the ECHO database. EPA's pre-dissemination review process should be entirely transparent. API requests that EPA more clearly describe the pre-dissemination review process for ECHO data, and how this process meets the intent of the OMB and EPA Information Quality Guidelines. ECHO states, "EPA and the States conducted a special review period for the information released in ECHO in order to identify problems and correct data from March 2002 to November 2002." However, EPA does not specify what steps comprised the review, or how ongoing pre-dissemination review will be conducted in the future. Given the nature of the information posted on ECHO (e.g., statements that certain facilities are in violation of environmental laws), it is important that EPA institute rigorous and explicit pre-dissemination review procedures for ECHO data.

B. Coordination with States

EPA needs to coordinate more closely with States in gathering and disseminating data via ECHO, and needs an efficient mechanism to resolve differences between ECHO and State enforcement information. In addition, EPA must take primary responsibility for the data on ECHO, since ECHO is an EPA information product and an EPA (not State) dissemination of information.

Recent media reports have increased our concern in this area. For example, in December 2002, the Bureau of National Affairs (BNA)

³ OMB Guidelines, section III.2, 67 FR 8459.

reported on communications between EPA and the state of Florida.⁴ BNA reported that State environmental officials charged that ECHO compliance records contained erroneous or incomplete information for at least 100 Florida facilities. State officials were quoted as stating that there had been no change to the website since they reported the errors to EPA. In response, an EPA official was quoted as stating that the data in question were entered by the state of Florida and, "EPA is not responsible for the data. We only created the infrastructure to make it more user friendly."

On the contrary, whenever EPA summarizes, analyzes, or aggregates information and disseminates it, that information product is the primary responsibility of EPA and is subject to EPA's Information Quality Guidelines. EPA must acknowledge that ECHO is an EPA information product, and that the Agency (not the States) is responsible for all data placed on ECHO. EPA should not attempt to place the blame on the States for erroneous data in ECHO.

If EPA is not prepared to take responsibility for quality control of data in ECHO, then the Agency should not post or otherwise disseminate that data. At a minimum, ECHO needs a mechanism to flag data that the States or others have indicated are incorrect, until such time as EPA has made the necessary corrections or resolved the correction request. In addition, if EPA suspects for any reason that certain State data are in error or of questionable validity, the data should not be posted until correction or verification is complete. For State information with known data problems, EPA should not post data from those States until data problems are solved, or at a minimum should include a conspicuous caveat describing the data problems.⁵

⁴ Bureau of National Affairs, *Daily Environment Report*, "Florida Officials Complain of Errors Posted On Site Listing Facility Compliance Records," December 11, 2002, page A-3.

⁵ One of our member companies found numerous errors in ECHO NPDES information in the "Measurement and Violations" section. After finding the errors too numerous to report one-by-one using

V. Information About Purported Violations

A. Alleged versus actual violations

EPA needs to distinguish between alleged and actual violations in the ECHO database. Despite the fundamental legal principle that an accused is considered innocent until proven guilty, ECHO equates mere allegations of non-compliance with actual non-compliance. The presentation of data in ECHO can indicate that a violation occurred, or is continuing, based either on an inspection or the beginning of an enforcement action, before the allegation is admitted or otherwise demonstrated to be correct. In some cases, the allegations are being contested by the facility and later may be resolved in its favor.

In other cases, EPA or a State alleges a violation, but then fails to pursue it, either because there is insufficient evidence to proceed or because the alleged violation is too trivial to warrant any further enforcement resources. In such cases, the enforcing agency sometimes withdraws the allegation, but often the agency simply takes no follow-up action, allowing the allegation to linger indefinitely. In the latter situation, ECHO would indicate continuing noncompliance over a lengthy period when the facility may have been in compliance, or the enforcing agency may have failed to establish that the alleged non-compliance actually occurred.

EPA's assertion that a facility is in "violation," when the resolution of the allegation is still in progress, contravenes basic principles of due process and EPA's obligation to maximize the quality of information that it disseminates. Moreover, serious business and community implications arise for a facility that is cited as being in violation, based only on an

ECHO's correction mechanism, a company representative spoke with both EPA and the State. State representatives said that they had correctly entered monitoring data from discharge monitoring reports (DMRs), but that the State database was somehow not compatible with ECHO software.

unresolved allegation, especially given the wide public dissemination of the information on the Internet. EPA should avoid presenting such misleading information, either by indicating when violations are merely alleged or by not including alleged violations in the database until they are affirmatively determined to be actual violations or have otherwise been finally resolved.

Although some allegations of non-compliance are resolved by agreement with a facility that does not admit that a violation occurred, without a final administrative or judicial decision, that does not negate EPA's obligation to present the data fairly and accurately. One way to distinguish between alleged and resolved violations would be to use different colored fonts to identify: a) alleged but unresolved violations; b) violations that have been confirmed by adjudication or administrative process; and c) violations that have been resolved by agreement with the facility, with or without admission of fault. An even better solution would be to use different abbreviations in the data boxes (in lieu of "INVIOL") to identify more clearly the status of a potential violation.

At a minimum, EPA should include a caveat on every page of a facility report that advises the reader not to assume that the posting of a "violation" on ECHO means that the facility is actually guilty of a violation. EPA should also promptly remove data indicating a "violation" if that allegation has been resolved in favor of the facility, whether by final adjudication or administrative process or by withdrawal of the allegation by the enforcing agency. Moreover, in the latter case, EPA should add a notation to the affected facility's report, after withdrawal of an unsubstantiated allegation, to clarify that the previously posted data were removed because the allegation was resolved in the facility's favor or because the enforcing agency decided not to pursue the allegation.

EPA has indicated that the “I-button” in the database may address some of these concerns. As currently constructed, the I-button does not in any way address these concerns. The I-button appears on summary reports generated from searching by zip code, under the “Enforcement Actions (2 yrs)” column. This column displays either “yes” (when a facility has had an enforcement action in the past two years) or the I-button. Clicking on the I-button displays the text:

The database shows no formal EPA or State enforcement action. Note that enforcement actions that are in process are not publicly available. For more information, continue to check this site for updates (monthly). The relevant State environmental agency also may have additional information. Also note that all violations do not receive formal enforcement actions. Violations that are minor, short in duration, or quickly corrected by the facility may not warrant formal enforcement action.

Thus, the I-button appears to be a caveat to warn users that there may be a violation even if no enforcement action was noted in ECHO. This addresses the **opposite** of the concern we are raising. EPA also must address the problem that ECHO in some cases wrongly, or at least prematurely, shows a facility to be in violation when the alleged violations have not been admitted or proven and ultimately may be withdrawn or resolved in the facility’s favor.

B. Single, isolated violations versus broader violations

ECHO should distinguish between a single isolated instance of non-compliance (established or alleged) within a program imposing a large number of compliance obligations, and non-compliance with many or all of the program obligations. For example, a one-time, short-lived instance of non-compliance with a Clean Air Act operating permit condition, by a facility subject to hundreds or thousands of such permit conditions on an ongoing, daily basis, can appear in ECHO as non-compliance with the

entire operating permit program for an entire quarter. EPA could remedy this by creating additional codes to indicate non-compliance and/or non-conformance with particular operating permit conditions. In any case, EPA should provide clear and obvious caveats within the facility report that state that listed violations typically reflect instances of non-compliance with one or several of numerous specific requirements or conditions, but generally not with the entire program. EPA should also provide additional context for such data, as discussed below.

C. Context for data

EPA should provide more meaningful context for ECHO data by providing estimates of the number of compliance obligations that a facility may face under a given program. API recognizes that it may not be possible for EPA to provide precise estimates of any given facility's actual compliance obligations. However, a rough indication (even within an order of magnitude) of the number of potential obligations that a given size or type of facility faces would provide the reader with a better perspective on a facility's overall compliance performance. For example, API and the American Chemistry Council previously provided EPA with a study estimating the number of compliance obligations faced by refineries and chemical plants of various sizes, and we are including it as an attachment to these comments.⁶ If EPA cannot provide its own estimates, it should provide a web link to the API/ACC study, so that interested users can access the industry estimates.

D. Misrepresenting corrected situations as ongoing non-compliance

Based on feedback from our member companies, there appear to be instances of non-compliance that were corrected quickly (e.g., within hours or days of discovery by the facility) for which ECHO gives the

⁶ "Compliance Rate Denominator Study," by Tischler & Kocurek for API/ACC (January 2002).

misleading impression that the violations continued, or are still continuing, for extended periods of time. For example, one company reported that a single alleged violation was shown for eight quarters, even though the issue had been corrected promptly (within the initial quarter). Another facility received two Notices of Violation that were issued and rescinded in the same month in 2001, but that are still listed in ECHO in both "Two Year Compliance Status by Quarter" and "Formal Enforcement Actions."

Compliance problems are often corrected long before resolution of the enforcement actions by the State or EPA, and even longer before the State or EPA has entered those resolutions in the database. This situation is especially troublesome since EPA and the States often take many months, or years, to complete the process of officially resolving non-compliance matters. Thus, even if a problem has been speedily corrected by the facility, the ECHO database may indicate ongoing "non-compliance" for years.

EPA needs to provide a mechanism to indicate the actual duration of non-compliance and when a facility remedies a non-compliance problem. In many cases, when a facility discovers or is informed of non-compliance, the facility will take immediate action to correct the problem. EPA needs to acknowledge such returns to compliance in a much faster timeframe than when the respective governmental body completes the bureaucratic process associated with a non-compliance finding.

EPA expects timely remedies of non-compliance from facilities; thus, it is only fair that the Agency should acknowledge the return to compliance in a timely manner. One solution may be to use an alternative code to "In Viol," such as "Remed" or "Reslv," to indicate that a violation occurred but has been remedied or resolved within a specific quarter. Subsequent quarters should have no indication of violation at all, unless the violation

actually is continuing in those quarters. If EPA reflects continuing non-compliance when, in fact, the problem has been resolved, it is disseminating misinformation.

E. Attributing company fines or settlements to single facilities

In some cases, ECHO attributes to a single facility a large fine imposed upon the facility's parent company for violations at multiple facilities. For example, one of our member companies submitted an error correction request regarding ECHO's misleading presentation of a multi-million dollar fine that was levied against the entire company for multiple facilities. In this case, ECHO listed the entire fine in the report for several individual facilities, making it appear that each facility incurred the total fine (as opposed to some portion of it). Conversely, that presentation of the data misleadingly implied that the total fine for that company was several times the actual amount.

Nonetheless, EPA rejected the error correction request, with the following explanation:

Case conclusion data regarding EPA enforcement actions is recorded in a national database known as the Integrated Compliance Information System (ICIS). The design of ICIS allows for the association of one or more facilities with a specific case conclusion (settlement agreement, judicial decision, etc.), but does not currently allow for the apportionment of penalties or other monetary amounts to any particular facility. In other words, facilities are only being associated with the conclusion event as a whole, not with any particular sub-set of data pertaining to that particular conclusion. Additionally, the term "facility" as used in ICIS is a reference to a geographical location only (the approximate location at which an alleged environmental infraction took place). Penalties and other monetary amounts are liabilities of legal entities (persons, corporations, etc.), *not liabilities of facilities*. Within ICIS,

legal entities bound by enforcement actions are recorded as "defendants" or "respondents" not as facilities

The manner in which ICIS organizes its data may be technically correct and useful in the context of that database. However, this does not excuse posting incorrect or misleading information in ECHO. If ICIS does not allow for the apportionment of penalties or other monetary amounts to any particular facility, then ECHO should not present ICIS data for individual facilities (unless the fine truly is attributable to a single facility). At a minimum, EPA should explain that a fine noted in a facility's report may be a company-wide fine for multiple facilities and is not necessarily attributable to the facility itself. This explanation should be presented directly with the facility-specific information, not relegated to a caveat separate from the facility report.

VI. ECHO caveats

EPA should retain and augment most of the caveats presented on ECHO, and should maintain and supplement them as necessary for the life of the website. Only those caveats that pertain strictly to the "pilot" nature of the database should be deleted. Furthermore, the remaining caveats should appear more frequently and closer to the data that users view. All relevant caveats should accompany each facility report, either directly or through an obvious link. In the current database format, it is difficult to find the caveats, and many visitors to the site—who are likely focusing on individual facility reports—are unlikely to go searching for them, especially since they may not even know that they exist.

Additional caveats that should be included permanently on the site, for reasons discussed above, include but are not limited to, the following:

- an allegation of non-compliance is not necessarily the same as actual non-compliance;

- an indication of an ongoing violation does not necessarily mean that the violation has not already been corrected;
- violations in the database vary widely in significance, and many are paperwork violations that have little or no health or environmental impact; and
- prior versions of the ECHO facility reports are no longer valid, since those reports may have contained information that has since been updated and/or corrected.

EPA should also explicitly indicate any known problems with specific data fields or data.

Finally, whenever ECHO data require a caveat, EPA should reconsider how the data are being communicated, how the data could be interpreted if the caveat is not read, and whether that data should be posted in the first place. Wherever possible, EPA should correct the data or refrain from posting it, instead of merely posting incorrect or misleading data and supplying caveats for it.

VII. Dating information, notifying facilities of changes, and process for posting data

ECHO should include dates on each facility report to indicate when a facility report has been changed (i.e., data changed or additional data added). This will help ensure that users do not mischaracterize facility, company, or industry sector compliance performance based on out-of-date information. It will also help facilities identify when EPA has added or amended data about the facility. Facility reports should be re-dated when (and only when) any information in the facility report has changed. EPA should not automatically re-date all facility reports whenever there is a data refresh, unless all facility reports have changed.

In addition, EPA should notify a facility directly when it posts new or amended ECHO information on the facility. One way for EPA to accomplish this would be

to add a function to ECHO that allows facilities to provide EPA with a contact e-mail. EPA would then e-mail the facility contact with notification of any changes to ECHO information. This would be a simple, yet important, addition to ECHO. Otherwise, facilities have the burden of continuously checking ECHO to see if data have changed.

Finally, EPA's schedule for changing ECHO data and for loading new information into the database is not clear. The website does show the next anticipated "pull date," but the meaning of this and the overall schedule for posting information are unclear. EPA should establish a schedule and inform the regulated community of it, so that companies can review new or amended data as soon as possible.

VIII. Demographic Data

The demographic data in ECHO is not enforcement and compliance information, has no relationship to enforcement and compliance information, and potentially mischaracterizes ECHO as a database that can be used to assess risk. EPA should remove demographic data from ECHO.

ECHO facility reports provide a detailed "Demographic Profile of Surrounding Area" section in each facility report. The section is presented with the following introduction: "This section is to provide context regarding the community setting of the facility. No relationship between this information, and other data included in this report is implied." These two statements are contradictory. By stating that the information provides "context," the Agency is in fact implying a relationship, and EPA's choice to include demographic data with facility reports does imply a relationship (even though EPA states that it does not). If there is no relationship between demographic data and the enforcement and data in the report, then why is the demographic data included at all?

The demographic data should not be included with facilities reports because it is not enforcement and compliance information and, moreover, its inclusion is misleading. Inclusion of the data can be readily perceived as encouraging users to draw conclusions about risk. A user could easily imply or conclude that the enforcement and compliance information somehow represents the hazard or harm piece of the risk equation, and the demographic information adds the exposure side. However, it is clear that ECHO information is not an indicator of risk. Information about enforcement actions and violations is not information about releases, toxicity of releases, human or environmental harm, or hazard of any sort. Many of the violations in ECHO are paperwork violations that have no associated human health or environmental impact.

EPA has an obligation to communicate clearly and effectively about risk (as a matter of public policy, as well as under the Data Quality Act). The current inclusion of demographic data with facility reports is contrary to this responsibility. It serves no purpose in the context of the database, and its inclusion is highly misleading to users. EPA should remove the demographic data and focus on the primary task of improving the quality of the enforcement and compliance information in the database.

IX. ECHO Costs and Benefits

EPA should acknowledge that posting the ECHO database creates significant burdens for both the Agency and the regulated community. Certainly EPA is *expending resources on the ECHO database, although the Agency has not provided cost-benefit or other justification that these resources are well spent.* Moreover, EPA has not taken into account the efforts the regulated community will undertake in response to the database.

Although ECHO does not impose any regulatory or other requirements, many companies are reviewing data on their facilities and taking action to submit corrections, and will continue to monitor ECHO on an ongoing basis. Although

such actions are technically voluntary, the need for expending them is real. If a company chooses not to track and (when necessary) correct ECHO data, the company risks widespread dissemination of misinformation about its facilities.

An added problem lies in the difficulties experienced by companies when the information related to a report of non-compliance on the ECHO database is not clear. The companies must expend additional resources in an attempt to determine what incident of non-compliance the report actually references. To alleviate the confusion surrounding an unclear report, EPA should promptly respond to all requests for clarification from companies and create an internal requirement that any such requests must be addressed promptly.

API suggests that EPA conduct further analysis of the benefits and costs of the ECHO project. It also may be appropriate for EPA to seek OMB input on this issue.

Finally, EPA should address the issue of other databases that contain redundant or overlapping information, particularly the Sector Facility Indexing Project (SFIP) database which, like ECHO, contains compliance and enforcement data. Despite many problems that the regulated community brought to EPA's attention during the development of SFIP, the SFIP database is still posted on EPA's web site.⁷ The existence of SFIP concurrent with ECHO poses the potential for EPA to present conflicting and/or confusing information on enforcement and compliance, and is an inefficient use of government resources.

⁷ Available at <http://www.epa.gov/sfip/>.